

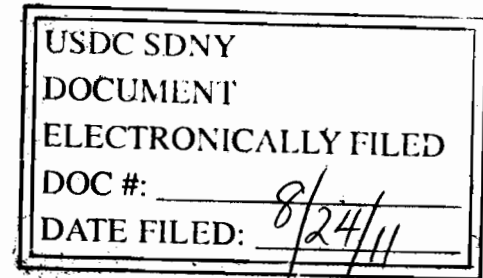
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August 10, 2011

**VIA FACSIMILE (212-805-6382)**



The Honorable Victor Marrero  
United States District Court, S.D.N.Y.  
500 Pearl Street, Suite 660  
New York, New York 10007

Re: Silverstein v. AllianceBernstein L.P., No. 09-CIV-5904 (VM) (DAF)

Dear Judge Marrero:

We are counsel to Defendant AllianceBernstein L.P. in the above matter. We write to alert the Court to a new decision, *Ruiz v. Serco, Inc.*, No. 10-cv-394-bbc (W.D. Wis. August 5, 2011), that is relevant to the pending motion for conditional certification pursuant to FLSA § 216(b). A copy of the decision is attached as Exhibit A.

The court in *Ruiz* denied the plaintiffs' supplemental motion for conditional certification pursuant to § 216(b) by relying in part on the Supreme Court's decision in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011). While the court acknowledged that *Dukes* was decided under Federal Rule of Civil Procedure 23, it held that the case was "instructive" on the conditional certification issue and that "the [Supreme] Court's discussion of the propriety of class actions generally provides guidance in deciding when certification of a collecti[ve] action under the FLSA is appropriate." Slip op. at 14.

Like the instant case, *Ruiz* involved a claim under the FLSA that the plaintiffs were misclassified as exempt employees. Applying the reasoning in *Dukes* to the issue of the job duties of the potential FLSA collective, the court held that "it would be difficult to generate common answers in light of the individualized inquiries arising from the wide variations in duties, experience, responsibility, discretion and supervisors on the part of the potential class members," and concluded that "it would be impossible to determine on a collective basis whether the class members are classified properly." *Id.* at 14-15.





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We thank the Court for its consideration of this matter.

Respectfully submitted,

SEYFARTH SHAW LLP

A handwritten signature in cursive script, appearing to read "Robert S. Whitman".

Robert S. Whitman

cc: Adam Klein, Esq. (via fax)  
Gregory Fidlon, Esq. (via fax)

The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by	
<u>Defendants</u>	
<b>SO ORDERED.</b>	
<u>8-15-11</u>	A handwritten signature in cursive script, appearing to read "Victor Marrero".
DATE	VICTOR MARRERO, U.S.D.J.